IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 21094 of 2004

Between:

1. M/s. Preyanshu Industries Limited, Rep by its Director
Sri Sanjay Gupta, A Company registered under the

Companies Act, 1956, and its Registered Office at 1-8-670,
Azambad, Hyderabad - 500 020.
2. Sri Sanjay Gupta, S/o. Ramkishan,
Resident of Plot No. 116/A, M.L.A. Colony, Road No.12,
Banjara Hills, Hyderabad.
3. Sri Ramkishan Gupta, S/o. Late Maganlal,
Resident of Plot No. 116/A, M.L.A. Colony, Road No.12,
Banjara Hills, Hyderabad.

... PETITIONERS

AND

1. Additional Commissioner of Income-Tax & Senior
Departmental Representative, I.T.A.T. IInd Floor,
D Block, Rajaji Bhavan, Besent Nagar, Chennai-600090.
2. Director Enforcement, Government of India, 6th Floor,
Khan Market, Lok Nayak Bhavan, New Delhi - 110 003.
3. Reserve Bank of India, Rep by Deputy General Manager,
Foreign Exchange Department, 6-1-56, Secretariat Road,
Saifabad, Hyderabad - 500 004.
4. Union of India, rep of its Secretary,
Ministry of Finance, North Block, New Delhi.

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or a direction more particularly one in the nature of Writ of Certiorari by calling the records in pertaining to the impugned proceedings dated 8th September, 2004 and quash the same as ex-*facie*, illegal, arbitrary without jurisdiction void and contrary to the provisions of Foreign Exchange Management Act, 1999 and violative of Article 14 and 19 (1) (g) of the constitution of India.

Counsel for the Petitioners: MR.B.S.SHIVAJI

Counsel for the Respondent Nos.1, 2 and 4: MR.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent No.3 : MR.K.SRINIVASA MURTHY

The Court made the following:

O R D E R: (Per BRSR,J)

The petitioners invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of *Certiorari* by calling the records pertaining to the impugned proceedings, dated 08-09-2004, on the file of the first respondent-Additional Commissioner of Income Tax, Senior Departmental Representative and to quash the same as illegal and without jurisdiction.

Learned counsel for the petitioners, without entering into any debate on the merits of the issues, *inter alia,* contended that the impugned order, dated 08-09-2004, suffers from incurable legal infirmity, being in violation of principles of natural justice.

We find substantial force in the submission made by the learned counsel for the petitioners. The first respondent *vide* proceedings, dated 18-08-2004, required

the petitioners to submit their explanation within a period of one month from the date of receipt of the show-cause notice, dated 18-08-2004. The first respondent is stated to have been appointed as an Adjudicating Authority to hold an enquiry under Section 51 of the Foreign Exchange Regulation Act, 1973 read with the Adjudication Proceedings and Appeal Rules, 1974. That even before the petitioners could submit their explanation, the Adjudicating Authority passed the impugned order, dated 08.09.2004. In our considered opinion, such a course was not open to the first respondent. The first respondent could not have passed the impugned order even before the expiry of the time granted in the show-cause notice requiring the petitioners to submit their reply. Even if it is to be construed that the notice, dated
18-08-2004, was immediately served upon the petitioners on the very next day, it was open to the petitioners to submit their explanation on or before 19-09-2004, whereas the impugned order has been passed on 08-09-2004. The impugned order is liable to be set aside only on this short ground and the same is accordingly set aside.

However, the petitioners are bound to submit their explanation to the show-cause notice, dated 18-08-2004, which, admittedly, they have received.

Having regard to the facts and circumstances of the case, we consider it appropriate to grant two weeks time in order to enable the petitioners to submit their explanation to the show-cause notice, dated 18-08-2004, which shall be received by the first respondent for his consideration, in accordance with law. The first respondent shall not refuse to receive the explanation to be submitted by the petitioners within two weeks from today on the ground that the time stipulated in the show-cause notice, dated 18-08-2004, has expired. It shall be open to the first respondent to pass an appropriate order in accordance with law.

The Writ Petition is accordingly disposed of. No order as to costs.

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B. SUDERSHAN REDDY, J.

Date:28-01-2005

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T.CH.SURYA RAO, J.

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Note: Furnish copy of the

Order by 01-02-2005.

(B/o)

GS/GJ

To

1. The Additional Commissioner of Income-Tax & Senior Departmental Representative, I.T.A.T. IInd Floor, D Block, Rajaji Bhavan, Besent Nagar, Chennai-600090.

2. The Director, Enforcement, Government of India, 6th Floor, Khan Market, Lok Nayak Bhavan, New Delhi - 110 003.

3. The Deputy General Manager, Reserve Bank of India, Foreign Exchange Department, 6-1-56, Secretariat Road, Saifabad, Hyderabad - 500 004.

4. The Secretary, Union of India, Ministry of Finance, North Block, New Delhi.

5. Two C.D. Copies.